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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/765,637

01/27/2004

Adolph Mondry

2272

47779

7590

10/17/2007

ADOLPH MONDRY
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EXAMINER

ST CLAIR, ANDREW D

ART UNIT

PAPER NUMBER

4175

MAIL DATE

DELIVERY MODE

10/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/765,637

Applicant(s)

MONDRY, ADOLPH

Examiner

Andrew StClair

Art Unit

4175

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 1/27/2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. In method claims, the steps must be clearly and positively specified. The claims must be in one sentence form only. Note the format of the claims in the patents cited.

Claims 1 and 11 each begin with approximately 10 lines of preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). The preamble of claims 1 and 11 recite the intended use of the method by reciting substantial structure of the apparatus which performs the claimed method. It is unclear whether applicant improperly incorporates an apparatus into a method claim, however, because the body of the claim refers back to certain elements of the preamble. For example, claims 1 and 11 each recite "the burners" in the body of the claims, apparently

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referring back to “the burners” recited in the preamble. Thus the scope of the claims are indefinite because it is unclear which limitations are included in the scope of the invention; claims 2-10 and 12-20 depend therefrom and are thus also indefinite.

Claims 1-20 all have substantial and pervasive antecedent basis problems. For example, “the second oxidant dose,” “the burners,” the second flue parameter dose, “the flue,” “the flue parameter level,” “the current circulation time,” and “the reaction time,” all lack antecedent basis.

Claim 1 recites the step of “sequencing through the plurality of sequential flue parameter doses;” such a step would appear to make sense only if the flue parameter can be independently manipulated, yet there is no mention in the specification or figures of any means which could independently supply CO, NO, or heat; rather these are understood to be byproducts of the multiburners.

The bodies of claims 1 and 11 each begin by reciting “the second oxidant dose;” while the respective preambles each mention a range oxidant doses ranging from a first to a second, there is no step of introducing a first oxidant dose. A step for delivering a “second” dose has definite meaning only in relation to a corresponding step for delivering a first dose, this claim language is thus rendered indefinite.

Claims 3 and 13 each recite “the current circulation time;” while “circulation time” and “circulation time delay” are each mentioned in the specification, there is no mention or definition of a “current circulation time.” The meaning of this term is thus unclear, further rendering the claims indefinite.

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Claims 4 and 14 each mention “the reaction time;” this term is mentioned only once in the specification (page 2, paragraph 33), in which it is defined as being equal to “tr,” a term which is included in many equations, but likewise has little or no explanation. The meaning of this term is unclear, further rendering the claims indefinite.

Claims 1 and 11 also refer to “a plurality of oxidant and sequential flue parameter doses ranging from a first dose to a second dose;” the common meaning of the term “plurality” is “more than two,” thus the limitation contradicts itself by claiming a range of only two. The number of respective doses is thus unclear, further rendering the claims indefinite.

Despite the above rejections, the claims are examined to the fullest extent possible.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Al-Halbouni (US 6,419,480).

Because of the highly indefinite nature of claims 1-20, the scope of the claimed invention cannot be discerned. However, as understood by the examiner, applicant discloses a system that varies the supply of oxidants supplied to a burner, thereby optimizing the byproducts of combustion such as NO, CO, and heat. Al-Halbouni discloses such a method, and teaches that they are well known in the prior art. (See Title; col. 1, ln. 30-55; col. 5, ln. 24-44).

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew St.Clair whose telephone number is 571-272-3700. The examiner can normally be reached on Monday through Thursday, 8-5 Eastern Standard Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrence Till can be reached on 571-272-1280. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ADS
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10/11/2007

Brian Nasit
B N 10/12/07
Terrence R. Till
Supervisory Patent Examiner